

REMARKS

The Office Action dated February 26, 2004, has been received and carefully considered. Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

I. THE ANTICIPATION REJECTION OF CLAIMS 1-19 and 21-29

On page 2 of the Office Action, claims 1-19 and 21-29 were rejected under 35 U.S.C. § 102(e) as being anticipated by Youngs et al. (U.S. Patent No. 6,600,918). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id..

Regarding claims 1 and 9, the Examiner asserts that Youngs et al. discloses "a method and an apparatus for broadcasting radio programming, TV shows, Internet, and etc. (sic) over a cellular transmission network (see column 3, lines 10), comprising: [p]roviding radio programming in an appropriate format; [e]nabling the radio programming to be accessible over a processor based network and wherein the processor based network

is connectable to a cellular transmission network; and transmitting the radio programming over the cellular transmission network and receiving radio programming (see Figure 1, column 3, lines 5-29)."

However, it is respectfully submitted that Youngs *et al.* fails to teach or suggest the limitations in claims 1 and 19. For example, Youngs *et al.* does not teach or suggest "enabling the radio programming to be accessible over a processor based network and wherein the processor based network is connectable to a cellular transmission network." Rather, Youngs *et al.* merely teaches a Mobile Switching Center (MSC) 22 for processing calls to and from the wireless users of the wireless network 20. Col. 2, lines 12-14. Youngs *et al.* further states that MSC 22 is known to those skilled in the art as a digital telephone exchange that controls the switching between a wireline network and mobile cell sites for all wireline-to-mobile, mobile-to-wireline, and mobile-to-mobile calls. *Id.* at lines 15-18. Thus, Applicant submits that MSC 22 is not a processor-based network, as the Examiner appears to assert, but rather part of a traditional cellular transmission network.

Regarding claims 17 and 26-29, the Examiner asserts that Youngs *et al.* discloses "an access device, MSC, for enabling radio programming to be accessible over a processor-based

network, a wireless network, the access device comprising: [a]n input for receiving radio programming (see Figure 1), inherently a converter for converting the radio programming to an appropriate format and a delivery module, a base station control that delivers the radio programming to a cellular transmission network." However, as explained above, the MSC 22 comprises part of a cellular network, and thus cannot comprise "a delivery module that delivers the radio programming to a cellular transmission network."

Moreover, to the extent the Examiner is asserting an inherency argument in rejecting Claim 17, Applicant refers the Examiner to MPEP § 2112 which states that "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Applicant respectfully submits that the Examiner has not set forth a proper inherency argument,

and thus requests that the rejection of claim 17 and 26-29 be withdrawn.

Claims 2-8, 10-16, 18, 19, and 21-29 are dependent upon independent claims 1, 9, and 17, respectively. Thus, since independent claims 1, 9 and 17 should be allowable as discussed above, claims 2-8, 10-16, 18, 19, and 21-29 should also be allowable at least by virtue of their dependency on independent claim 1, 9 or 17. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, claim 8 recites that the claim 1 step of providing

radio programming in an appropriate format further comprises: accessing a radio station over the Internet." Applicant submits that the excerpt of Youngs et al. cited by the Examiner -- Col. 3, lines 17-20 -- merely states that video communications obtained from the Internet may be transmitted through MSC 22. However, this is not the same as "accessing a radio station over the Internet," as expressly required by claim 8.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1-19 and 21-29 be withdrawn.

II. THE OBVIOUSNESS REJECTION OF CLAIM 20

On page 4 of the Office Action, claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Youngs et al. in view of "Official Notice." The Examiner alleges that the fact is "notoriously well-known in the art to compress and encode an input signal in order to be adapted by another system." The Applicants traverse this rejection because there is no support in the record for the conclusion that the identified features are "old and well known." In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his position.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claim 20 be withdrawn.

II. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hunton & Williams LLP

By:

Thomas E. Anderson

Registration No. 37,063

TEA/OAF

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

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